

TABLE OF CONTENTS

| | Page |
|--|------|
| I. EXECUTIVE SUMMARY | 1 |
| II. INTRODUCTION. | 4 |
| III. BACKGROUND. | 5 |
| A. How Does Interest-Based Negotiations Differ From Traditional Negotiation | 5 |
| B. Why Use an Interest-Based Approach In The Context of Collective Bargaining | 5 |
| C. How The Interest-Based Experiment Came About | 6 |
| IV. THE INTEREST-BASED NEGOTIATION PROCESS | 7 |
| A. The Negotiating Teams | 8 |
| B. The Four Stage Process | 9 |
| C. Training Participants in the Interest-Based Process | 10 |
| V. HOW NTEU AND MANAGEMENT APPLIED THE INTEREST-BASED NEGOTIATION MODEL | 11 |
| VI. RESULTS. 12 | |
| VII. LESSONS LEARNED 12 | |
| VIII. CONCLUSION. 21 | |

Only by changing the nature of Federal labor-management relations so that managers, employees, and employees' elected union representatives serve as partners will it be possible to design and implement comprehensive changes necessary to reform Government. Labor-management partnerships will champion change in Federal Government agencies to transform them into organizations capable of delivering the highest quality services to the American people.

President Clinton

October 1, 1993

EXECUTIVE SUMMARY

This case study describes and analyzes the application of an interest-based negotiation process in the context of collective bargaining.

BACKGROUND:

In the Fall of 1993, the National Treasury Employees Union (NTEU) and the Department of Health and Human Services' Multi-Regional Bargaining Unit Management (Management) successfully carried out a joint experiment to test the use of an interest-based negotiation (IBN) process. IBN -- a process that builds on group participation and consensual decision-making techniques -- has been gaining considerable appeal among government policy-makers and negotiators seeking to build labor-management partnerships as envisioned by Executive Order 12871.

How Does Interest-Based Negotiation Differ From Traditional Negotiation -- Traditional bargaining focuses on rights and positions, with opposing parties exchanging and arguing vigorously over specific proposals. Each party seeks to win concessions and ultimately come out ahead, a constant "win-lose" scenario. In contrast, IBN bargaining focuses on interests, concerns, and needs. Parties work together to identify issues and interests and to develop options for mutual gain. An interest-based approach offers parties an opportunity for more creative outcomes or solutions, more durable solutions, and improved long-term relationships.

Why Use An Interest-Based Approach in the Context of Collective Bargaining -- Collective bargaining is just one element of the labor-management relationship. However, the relationship of the parties, as established within the bargaining framework, and the nature of the collective bargaining agreement can significantly impact ongoing labor-management activities. By focusing on interests rather than positions during the bargaining process, IBN can help build long-term cooperative working relationships. Applying an interest-based approach can also be beneficial when negotiations involve complex subject matter.

How the Interest-Based Negotiation Experiment Came About -- The NTEU and Management have a history of innovation in the bargaining arena. Since 1985, the NTEU and Management have worked together to implement mechanisms to reduce the time and cost associated with the resolution of labor-management conflicts. A multi-regional contract, several alternative dispute resolution (ADR) processes, and a Labor-Management Committee structure are all mechanisms that paved the way for using an IBN process.

THE INTEREST-BASED NEGOTIATION PROCESS

In the Spring of 1993, the NTEU and Management agreed to use an IBN model developed by the Department of Labor (DOL) and the Federal Mediation and Conciliation Service (FMCS) to renegotiate two articles in their collective bargaining agreement. The DOL/FMCS model encompasses a comprehensive six-step problem-solving process. Using this six-step process participants reached agreement on new contract language for articles dealing with the use of official time by Union representatives and the reassignment of bargaining unit employees. Prior to the negotiations, facilitators from the FMCS and the Federal Labor Relations Authority (FLRA) jointly trained participants in application of the model.

HOW THE NTEU AND MANAGEMENT APPLIED THE INTEREST-BASED NEGOTIATION MODEL

In applying the DOL/FMCS model, NTEU and Management participants found that although the model was useful as a general guide to the INB process, it was not a recipe for success. Participants, aided by

an experienced facilitator, adapted the model to their specific needs. As they gained confidence in the overall IBN process, they became more skilled at adapting the model to meet their needs.

RESULTS

The NTEU and Management reached agreement on new language for both contract articles. Participants were especially pleased by the high quality of the articles. Both parties deemed the experiment a success and agreed to apply an IBN process to their 1994 term negotiations.

LESSONS LEARNED

Successful application of IBN processes in future bargaining contexts depends in part on a thorough understanding of what worked and what did not. Fourteen lessons learned highlight the main learning points from this experiment and provide a foundation for practical application of an IBN process.

1. Establish clear and comprehensive groundrules
2. Allow for adequate planning and preparation
3. Clearly define the role of the facilitator(s).
4. Identify issues early and test assumptions for accuracy.
5. Establish realistic expectations with regard to time and cost.
6. Allow for flexibility in the application of any interest-based negotiation model
7. Take advantage of available technology.
8. Accept the inevitability of conflict.
9. Recognize the importance of building trust
10. There is no magic formula for predicting what issues are most appropriate for an interest-based process.
11. Contract language is not the only "product."
12. Communicate with constituents throughout the process.
13. Document what occurred and why.
14. Take advantage of opportunities for joint documentation and training.

CONCLUSION

While we cannot yet assess the long-term impact of the process on such measures as the number of grievances filed, incidence and pace of litigation activity, etc., the parties to this experiment expressed mutual satisfaction with both the process and the outcome. The success of this experiment, despite the application of the IBN process to a highly contentious issue (official time for union activities), bodes especially well for future use of IBN in the collective bargaining context. Continued use and further development of IBN tools and techniques can contribute significantly to the development of effective labor-management partnerships, a key goal of the Clinton Administration.

II. INTRODUCTION

In the Fall of 1993, the National Treasury Employees Union (NTEU) and the Department of Health and Human Services (DHHS or the Department) successfully applied an interest-based problem-solving process to renegotiate two articles in their multi-regional collective bargaining agreement. Using a six-step problem-solving process developed by the Department of Labor (DOL) and the Federal Mediation and Conciliation Service (FMCS), the NTEU and Departmental Multi-Regional Bargaining Unit¹ Management (Management) reached consensus on language for contract articles dealing with the use of official time by union representatives and reassignments of bargaining unit employees. Prior to the negotiations, NTEU and Management participants received two days of training on interest-based negotiation conducted by facilitators from the FMCS and the Federal Labor Relations Authority (FLRA). Negotiations were completed in two five-day rounds. Round one was held October 4-8 in Alexandria, Virginia. Round two took place November 8-12 in Seattle, Washington.

This case study describes and analyzes how the NTEU and Management applied an interest-based negotiation process in the context of collective bargaining. The information contained in the case study provides a framework for others interested in experimenting with an interest-based approach. The following areas are discussed: (1) how interest-based negotiation differs from traditional negotiation, (2) why use an interest-based approach in the context of collective bargaining, (3) how this experiment came about, (4) the interest-based process and how it was applied by the NTEU and Management, (5) the results of the experiment, and (6) lessons learned.

Like any new process, interest-based negotiation requires change. Participants must shed old habits and be willing to adopt alternative approaches to their traditional way of doing business. Because many labor-management relationships have a long history of adversarial positional bargaining, a shift to interest-based negotiation cannot occur overnight. Changing the fundamental structure of labor-management negotiations will take time. Pilot projects such as the one described in this case study are starting points. With continued commitment and hard work these efforts can, however, lead the way to improved Federal labor-management relations as envisioned by Executive Order 12871².

The NTEU and the DHHS hope that by sharing their experience and lessons learned others will gain a better understanding of interest-based negotiation and, in turn, will share their experiences with this process so that practical applications may be developed as quickly as possible.

III. BACKGROUND

A. HOW DOES INTEREST-BASED NEGOTIATION DIFFER FROM TRADITIONAL NEGOTIATION

Traditional negotiation is positional rights-based bargaining. The parties focus on their position(s) or what they **want** as an outcome or solution. The parties exchange proposals consistent with their position(s).

¹The Department and the NTEU in 1986 agreed to a collective bargaining arrangement covering all ten of the Department's regional bargaining units. The ten regional office bargaining units are now consolidated and referred as the Multi-regional Bargaining Unit.

²Executive Order 12871 was signed by President Clinton October 1, 1993, in order to promote the establishment of labor-management partnerships throughout the Federal executive branch. Among other things, the Executive Order establishes a National Partnership Council and requires the implementation of labor-management partnerships in the executive agencies.

Unrealistic proposals are often submitted. The parties argue vigorously over these proposals demanding concessions from the other side. The more each party defends his or her position, the more committed they become to their positions. Outcomes are normally determined through a series of powerplays, threats or ultimatums, frequently resulting in adversarial labor-management relationships.

In contrast, interest-based negotiation requires the parties to focus on their interests, concerns, and needs. The parties must look behind their positions for the **why** -- why they want a particular outcome or solution. With interest-based negotiations, instead of exchanging positions, the parties identify and clarify their issues and interests, generate options for mutual gain, establish objective standards to measure the viability of options, and agree on specific options that satisfy both or multiple parties' interests. In general, an interest-based approach offers an opportunity to develop more creative outcomes or solutions that can benefit an organization as a whole, more durable solutions that parties are willing to uphold, and improved long-term relationships.

B. WHY USE AN INTEREST-BASED APPROACH IN THE CONTEXT OF COLLECTIVE BARGAINING?

The establishment of a National Partnership Council to promote labor-management partnerships, downsizing of the Federal labor force, increased competition with the private sector, demands for high quality service, and a growing acceptance of alternative dispute resolution (ADR) processes are all factors encouraging Federal managers and Union officials to explore new ways of working together. These pressures coupled with a genuine interest in improving day-to-day labor-management relations have created an environment where Management and Labor are increasingly willing to experiment with non-traditional approaches to problem-solving.

Interest-based negotiation provides one alternative to the traditional collective bargaining process. The bargaining process, including the collective bargaining agreement and the relationships stemming from the negotiation and implementation of the agreement, is often the key to determining whether a labor-management relationship is cooperative or adversarial. The negotiation of a collective bargaining agreement is only one activity affecting day-to-day labor-management relations. However, healthy working relationships that develop during the negotiation can help ensure the effective implementation of the agreement and can set a positive tone for future interactions. Alternatively, if the negotiation results in unresolved tensions and distrust, implementation of the agreement as well as future interactions can be seriously hindered. Unresolved conflicts may quickly become politicized, escalating into more intense and destructive disagreements. By focusing on concerns and needs rather than positions during the negotiation process, an interest-based approach provides an opportunity for parties to begin building a healthy working relationship that can lead to a cooperative long-term partnership.

Applying an interest-based approach may also be beneficial when negotiations involve complex subject matter. Unlike traditional negotiations, an interest-based approach requires the parties to look for joint gains and workable solutions that satisfy both or multiple parties' interests. When dealing with a complicated network of issues and interests, careful analysis of the interests (shared, competing, and different) can be more effective in achieving creative and durable solutions.

C. HOW THE INTEREST-BASED EXPERIMENT CAME ABOUT

The NTEU and the DHHS have a history of engaging in cooperative efforts. To reduce the cost and time associated with the resolution of labor-management conflicts, the NTEU and Management have worked together since 1985 to implement mechanisms to improve communication and problem resolution. A multi-regional contract, alternative dispute resolution (ADR) processes, and a Labor Management Relations Committee (LMRC) structure are all mechanisms that helped pave the way for use of an interest-based negotiation process in the collective bargaining context.

Multi-Regional Contract

The NTEU represents employees in each of the operating and staff divisions in the Department's ten regional offices. Cooperative efforts between the NTEU and the DHHS began in 1986 when DHHS and NTEU agreed to a collective bargaining arrangement covering all ten of the Department's regional bargaining units. This unique arrangement brought the ten regional units under one multi-unit contract. In 1990, the NTEU and the DHHS negotiated the consolidation of the ten regional offices into one multi-regional bargaining unit. Currently, there are more than 4,000 employees in the multi-regional bargaining unit. While the multi-regional unit is one consolidated bargaining unit, there are separate NTEU chapters in each of the Department's ten regional offices.

Alternative Dispute Resolution Processes

The NTEU and Management have jointly established a number of ADR processes to expedite the bargaining process and to resolve conflicts without necessitating the use of traditional dispute resolution systems. In 1990, the NTEU and Management developed ground rules for multi-unit negotiations. These ground rules created an alternative to the traditional impasse resolution structure and encouraged both the Union and Management to identify and communicate their underlying concerns and needs related to the issues being negotiated. The new ground rules helped to change the way the parties approached the labor-management relationship and set the stage for the application of an interest-based approach in the collective bargaining context.

Labor-Management Relations Committee

To foster a more cooperative working relationship, the NTEU and Management have also established a Labor-Management Relations Committee (LMRC) structure. The LMRC is made up of ten Union and Management representatives from the Department's regional offices. Committee members serve on a rotating basis. Five members are Union Chapter Presidents and five are DHHS Regional Labor Relations Officers. The Committee normally meets three times a year. Committee meetings serve as forums to address issues such as contract interpretation, the implementation of ADR processes, and any problems common to two or more regions. Pending cases involving grievances and unfair labor practice cases are excluded from LMRC consideration. When necessary, subcommittees are established to address issues requiring more in depth examination.

In addition, several of the Department's regional offices have local LMRC structures. Regional LMRC membership includes the local NTEU Chapter President and the DHHS Regional Labor Relations Officer. Regional LMRCs provide parties at the local level an opportunity to resolve conflicts in a non-threatening, non-adversarial atmosphere. Parties talk to one another in off-the-record settings where conflicts can be resolved informally.

IV. THE INTEREST-BASED NEGOTIATION PROCESS

In the Spring of 1993, the NTEU and Management agreed to participate in an experiment where two articles of the parties' multi-regional collective bargaining agreement would be renegotiated using an interest-based negotiation process developed by the Department of Labor and the FMCS. Negotiations were originally scheduled for ten days in June, 1993, in Washington, D.C. However, they were postponed when the NTEU and Management failed to reach agreement on the financial arrangements for covering the cost of the negotiations. Throughout the summer, dialogue continued between the NTEU and Management until a final agreement was reached in September, 1993.

The parties agreed to a five-day time frame for negotiating two articles of the collective bargaining agreement. Negotiations were set for October 4-8 in Alexandria, Virginia. At the end of this five-day time frame, the parties determined that a second round of negotiations was needed to complete both articles. The NTEU and the DHHS then agreed to a second five-day round of negotiations to take place in Seattle, Washington, November 8-12.

The NTEU and Management worked closely with facilitators from the FMCS and the FLRA in planning and preparing for the negotiations. The NTEU and Management agreed that each team would choose one

article that they wanted to renegotiate using the interest-based process. Management chose Article 13, Official Time, and the NTEU chose Article 17, Reassignments. Management chose to renegotiate Official Time because Official Time had long been a controversial issue and had been the subject of much litigation in the Department. Although the Reassignments Article had not been nearly as problematic as the Official Time article, the Union felt that this article was also in need of modification.

A. THE NEGOTIATING TEAMS

During the first five days of negotiations (round one) the NTEU negotiating team included six members -- five Chapter Presidents representing five different regional offices and one NTEU National Office attorney serving as the Union's national negotiator for the Multi-Regional Bargaining Unit. The Management team was made up of seven members -- two Regional Labor Relations Officers and five members of Management's Labor Relations Advisory Committee³. Both teams had agreed that there would be an equal number of members on each negotiating team. However, because one NTEU member was unable to attend the negotiations, the Union team ended up with one less member than the Management team. The NTEU did not let this imbalance stop or delay the bargaining.

During the second five days of negotiations (round two), the NTEU negotiating team included seven members -- six Chapter Presidents and one NTEU attorney. The Management team included eight members -- three Regional Labor Relations Officers and five members of the Department's Labor Relations Advisory Committee.

Again, the imbalance in the number of team members was not an issue.

B. THE FOUR STAGE PROCESS

The NTEU and Management agreed to apply an interest-based negotiation model developed by the Department of Labor and the FMCS. The model encompasses the following four stages:

- 1) Prepare for Negotiations
- 2) Open Negotiations
- 3) Negotiate Using a Six-Step Problem-Solving Process
- 4) Communicate Results to Constituents

Stage One

Stage one is the "homework" stage. This stage involves preparation by the Union and Management teams separately as well as jointly. Like traditional negotiation, individual team preparation involves collecting and analyzing information regarding the substance of the articles being negotiated. The interest-based process also involves the solicitation of support and buy-in from participants and stakeholders during this stage. All participants and stakeholders must understand why the interest-based process was chosen, how it works, and what outcomes are expected. Participants affirm their commitment to the process and begin to communicate objectives and expectations. Joint preparation involves training all participants in the interest-based process, and establishing ground rules and decision-making procedures.

Stage one establishes a framework for open discussion, clarification, and resolution of issues. In comparison to traditional bargaining, the activities that take place during the preparation stage may play a more critical role in determining the outcome of the negotiations.

³Multi-Regional Management's Labor Relations Advisory Committee is made up of management representatives from each of the Department's operating and staff divisions and selected Regional Labor Relations Officers.

Stage Two

The second or opening stage of the process gives the parties an opportunity to reinforce their commitment to the interest-based process and provides a foundation for later consensual decision-making. Representatives for both the Union and Management give opening statements. The opening statements set the tone for the negotiations and allow the parties an opportunity to explain why an interest-based process is being used. At this stage participants may also want to discuss, clarify, and come to agreement on the definition and scope of the issues brought to the table.

During this stage, an experienced neutral facilitator may assist by facilitating a discussion of informal guidelines that will be used to modify individual behavior during the course of negotiations. Unlike procedural ground rules that traditionally are negotiated and captured in a signed agreement, these ground rules are informal and focus on ensuring full and open participation. A discussion of informal guidelines can provide a first opportunity for participants to practice consensus decision-making.

Stage Three

The third stage of the negotiation uses a six-step problem-solving process. This is normally the most difficult and time-consuming stage of the negotiations. The six steps include:

- (1) identifying the issue(s),
- (2) discussing all interests behind the issue(s),
- (3) generating options to meet the interests,
- (4) establishing objective standards,
- (5) evaluating each option against the standards, and
- (6) developing solutions and capturing them in writing.

A variety of techniques or tools are used to assist the parties in carrying out each of these steps. With the assistance of a neutral facilitator or joint Union/Management facilitation team, parties engage in activities such as brainstorming, distinguishing positions from interests, consensus decision-making, and group problem solving. All of these activities are aimed at nurturing and preserving the consensual nature of the interest-based negotiation process. Only through open discussion and joint problem-solving will participants be able to reach a mutually satisfying resolution of the issues and establish a foundation for a more cooperative long-term relationship.

Stage Four

The fourth and final stage of negotiations involves conveying the outcome or results to constituents. Bargaining team members must develop a means to inform and educate their constituents regarding final contract language. Results should be communicated to all levels of constituents, including internal organizational leadership.

C. TRAINING PARTICIPANTS IN THE INTEREST-BASED PROCESS

Because the skills needed to effectively implement an interest-based process differ from those used for traditional negotiations, most participants using an interest-based approach will need some training. Other than substantive knowledge of federal labor relations, the essential skills participants must be familiar with include: consensus decision making, active listening, and brainstorming techniques. Because these skills are used by any group involved in joint problem solving, participants with prior experience in group problem solving or quality initiatives may already be familiar with them.

Both negotiating teams were jointly trained in the DOL/FMCS interest-based negotiation model. The parties chose a joint training session rather than separate sessions in order to promote cooperative relationships, a common understanding of the material, and to give the parties an opportunity to get to

know one another better.

Facilitators from the FMCS and the FLRA conducted a two-day training session in April, 1993 in Philadelphia. Because the FMCS and the FLRA had been involved from the beginning in developing the pilot and are generally perceived as neutral agencies, representatives from these organizations conducted the training. This approach helped to avoid any perception of bias, on the part of the trainers, toward either the Labor or Management participants. Participants worked with the FMCS and FLRA trainers to gain the group problem-solving skills necessary to apply an interest-based process. During the training each participant was given a manual describing the DOL/FMCS model. This manual served as a guide for participants during the experiment.

V. HOW NTEU AND MANAGEMENT APPLIED THE INTEREST-BASED NEGOTIATION MODEL

In applying the DOL/FMCS model, participants found that although the model was useful as a general guide to the interest-based process, it was not intended to be a recipe for success. At several points in the process, the model lacks sufficient detail on how to carry out the six problem solving steps. For example, brainstorming is recommended for developing options, but no guidance is given as to what can be done to narrow a large number of options when a group does not have enough time to discuss each and every option. Eliminating duplicates and combining options may not be enough to reduce a list to a manageable number, especially if participants are reluctant to eliminate each others' ideas.

The NTEU and Management struggled to complete steps three, four, and five of the DOL/FMCS model -- generating options, establishing standards, and evaluating the options against the standards. In particular, participants had a difficult time finding an effective means to narrow the large number of options and standards generated through the brainstorming process. Participants found that in some instances they were reluctant to suggest dropping another's option because they thought that this would conflict with the principles of group participation and decision-making. Participants also found it difficult to come up with a mechanism to evaluate each option against the standards. The evaluation process could not be reduced to a simple matrix format as laid out in the DOL/FMCS model. Participants needed additional process tools to narrow the options and standards and to evaluate options against the standards.

Where the DOL/FMCS model lacked the detail for effective implementation, the participants, aided by a facilitator, developed appropriate tools to adapt the model to their needs. To help reduce the number of options for both articles, participants used a ranking prioritization process. To evaluate the reduced number of options against the standards, participants developed a three-point scoring method. These tools gave participants an opportunity to assign numerical values to options providing a more objective means to reduce and prioritize options. These adaptations to the model were first developed during round one of the experiment and later refined during round two. As the parties gained confidence in the overall interest-based process, they became more skilled in adapting the model to meet their needs.

Although the DOL/FMCS model does not discuss the idea of joint training, following agreement on the final contract language (step six), participants agreed to conduct joint training to educate constituents regarding the new contract articles. Joint training took place in each of the Department's ten regional offices. Training materials were jointly developed by the NTEU and Management. Each training session was conducted with the assistance of either a member of the Union or Management bargaining team and included educating constituents not only on the substance of the new articles, but also on the application of the interest-based process.

VI. RESULTS

The NTEU and Management reached agreement on new language for both contract articles brought to the table. Both parties deemed the experiment a success. While we cannot not yet assess the impact of the

interest-based process on such factors as the number of grievances filed under the new articles, the incidence and pace of litigation activity, etc., participants expressed mutual satisfaction with both the process and the quality of the new contract language. More than simply aiding participants in reaching agreement on new language, the process enabled participants to acknowledge, understand and reconcile different and competing interests. Participants reached agreement on solutions addressing both separate and mutual interests. The NTEU and Management agreed to apply an interest-based approach to their 1994 term negotiations for the multi-regional contract.

VII. LESSONS LEARNED

Applying an interest-based approach to collective bargaining was a difficult but ultimately rewarding experience for both negotiating teams. Because the NTEU and DHHS negotiations were experimental, participants spent a significant amount of time de-briefing and analyzing the pros and cons of their experience. Successful application of an interest-based process for future bargaining depends in part on a thorough understanding of what worked and what did not. The following guidelines summarize the main lessons learned from this experiment and provide a foundation for the practical application of an interest-based process.

1. Establish Clear and Comprehensive Ground Rules

Ground rules are critical to any negotiation process. They give the parties a common understanding of how the negotiation process will be conducted and set expectations related to participants behavior. Normally, ground rules address two areas: traditional procedural elements and self-imposed informal guidelines dealing with individual behavior.

Whether using traditional negotiation or an interest-based process, ground rules for a negotiation should include procedural elements such as:

- when and where negotiations will take place,
- who will pay for what,
- membership of the negotiating teams,
- time frames,
- what, if any, dispute resolution procedure will be used if parties reach impasse.

In addition to the above elements, procedural ground rules for interest-based negotiations should include an agreement to use the interest-based process, an explanation of why this process is being used and, in general, how it will be applied. The ground rules should also address whether a neutral facilitator will be used. Procedural ground rules are developed and agreed to prior to the start of negotiations and are often written by spokespersons for the Union and Management bargaining teams.

Ground rules should also include self-imposed informal guidelines to ensure full and open participation during all group discussions. These guidelines set expectations for individual behavior, to ensure that all points of view are heard and considered. They also address how decisions will be made (e.g. consensus decision-making) and clearly define the role of the facilitator as well as the individual behaviors the facilitator will be expected to monitor. These informal ground rules are developed by all participants at the beginning of face-to-face negotiations and are frequently revisited throughout the process.

Participants to this experiment determined that they could have avoided confusion and misunderstanding related to both process and substance had their procedural ground rules been more comprehensive. They concluded that the ground rules should have clearly set out what participants were committing to when they agreed to use an interest-based process. For example, some participants stated that the

ground rules should have stated that all interests and issues must be put on the table up front in the process. The interest-based process relies on a series of sequential steps that build on one another. Adding new issues or interests late in the process breaks this sequence, creating the potential for significant confusion and misunderstanding about both the process and the substance of the negotiations. To address this concern, before the commencement of term negotiations, participants agreed to amend their procedural ground rules, adding more specific language regarding the interest-based process.

2. Allow for Adequate Planning and Preparation

Planning and preparation is critical to the efficiency and success of any negotiation. Time and attention needs to be devoted to identifying constituents and their interests. Participants should consider surveying constituents to determine their interests regarding all issues being discussed. In addition, planning and preparation requires that participants educate themselves and their constituents regarding the process that will be applied. Prior to coming to the table, participants should also meet with their own team members to identify issues and underlying interests. During the negotiations these issues and interests will be shared with the counterpart bargaining team. When issues and interests are identified prior to coming to the table, this sharing process can be more efficient. Individuals will already have identified their own concerns, allowing the discussion to focus on the exchange and clarification of interests.

The interest-based process normally does not provide for extended caucus periods to identify issues and interests **after** bargaining begins. Although caucuses can be useful to revisit constituents needs and concerns, they can become forums for traditional adversarial strategizing.

Some participants expressed concern that not enough time was allocated to planning and preparation. Given the initial time frame of one week, participants felt that it would have made the process go more quickly if they had attempted to identify all issues and interests before coming to the table. Participants spent the first day of negotiations identifying and clarifying issues and interests. Had each team set aside time to identify issues and interests prior to coming to the table, this step might have been completed more efficiently. In addition, participants learned that planning and preparing does not always end once the parties reach the table. If negotiations encompass several rounds, it may be necessary to revisit specific planning or preparation issues once negotiations are underway.

3. Clearly Define the Role of the Facilitator(s)

The role of the facilitator(s) must be clearly defined from the on-set of negotiations. All participants should agree on the role of the facilitator(s) and this role must be clearly communicated to participants. Careful attention must be given to balancing participants' need to have guidance in the process with their need to become self-reliant and self-policing. As a group becomes more comfortable working together and applying the process, some members will begin to take a more active role in directing the process and discussions.

A facilitator is a neutral third-party who acts as a guide in leading the parties through the process. The facilitator does not get involved in the substance of the negotiations. He or she focuses only on the process. The facilitator is key to keeping the Group on track -- helps to focus participants on their goals, objectives, and on the specific tasks to be accomplished. He or she also helps to safeguard full and open participation by monitoring individual behavior. When a facilitator(s) is used to guide the interest-based process, a trained impartial facilitator aware of the dynamics of the labor-management relationship is essential.

During the first round of this experiment, there was much uncertainty about the role of the facilitators. The FMCS and FLRA facilitators decided that to encourage participants to be more self-reliant and self-policing, they would take a "back seat" or more consultative approach to facilitating. Their expectation was that participants would lead themselves through the six-step problem-solving process. This expectation as

to the role of the facilitators was, however, not clearly communicated to participants prior to the start of the negotiations. Participants had different expectations and felt somewhat lost in applying the interest-based process. The Group was not prepared to self-facilitate. The chief spokespersons for each bargaining team attempted to serve as rotating facilitators, but this led to confusion as to the spokespersons' role in the process.

Recognizing that they needed more help in facilitating the process, participants made the decision to draw on experienced facilitators from both the Union and Management support staff. The teams wanted to use a facilitation team made up of one facilitator from Management staff and one facilitator from the Union staff. However, because a Union facilitator was not available, a member of Management's staff was asked to proactively facilitate. Although there was initially some skepticism on the part of the NTEU whether a member of Management's staff would be neutral, this facilitator was ultimately well-received by both the Management and Union teams⁴. Participants found the facilitator to be helpful in introducing techniques or process tools, in facilitating the process, in moderating discussion, in helping the group set goals, and in keeping the group focused on specific tasks to meet their goals.

4. Identify Issues Early and Test Assumptions for Accuracy

Any issues that participants want to raise during the negotiations should be identified early on in the process. Although it may be difficult to identify all issues up front, participants must work with constituents to anticipate and articulate issues during the first few steps in the problem solving process (steps one and two of the DOL/FMCS model). Once parties have moved beyond the initial identification and discussion of issues and interests, it becomes disruptive to the efficiency and effectiveness of the process to interject new concerns. Bringing up new issues late in the process can destroy trust between the parties and the parties' trust in the process. Raising a new issue once parties have completed steps one and two, could be viewed as a manipulative tactic or an attempt to revert back to positional bargaining. If participants feel that they are being manipulated or pushed back into positional negotiating, negotiations may break down and participants may be reluctant to continue with an interest-based approach. As stated above, bringing up new issues late in the process is also counter to the sequential nature of the process -- all options and solutions flow from issues and interests raised during the early steps of the process. Assumptions regarding issues and interests should also be tested early on in the process.

Recognizing that in all instances it may not be possible to anticipate up front every issue and test all underlying assumptions, parties should consider building into the process some mechanism to consistently address this situation. Should an issue arise or an assumption be questioned late in the process, parties may agree that a specific procedure will be followed to deal with these situations. Such procedures should be addressed in the ground rules so that all participants have a common understanding of the procedures to be followed.

During negotiations between the NTEU and Management an issue arose during step six of the process (while parties were engaged in drafting contract language) that had not previously been addressed. This issue arose when the parties recognized that they each had assumed a different definition of a term used in the contract. Because the definition of this term affected how the entire contract would be applied the participants felt they could not move forward until the issue was resolved. After much discussion, participants were able to resolve the issue. Early testing of assumptions may have helped to prevent such a disruption.

⁴Subsequent to this experiment, the NTEU did bring in an experienced facilitator to aid the bargaining teams during term negotiations. The Management facilitator and the NTEU facilitator agreed to jointly guide the Group as they apply an interest-based process to term negotiations.

5. Establish Realistic Expectations With Regard to Time and Cost

An interest-based process is time consuming, at least initially when participants may be unpracticed in the art of group process and consensual decision-making. However, with experience, participants will likely develop the necessary skills to move more quickly through the process. For participants in the NTEU/DHHS experiment, the interest-based process took more time than initially was expected. Participants found that a one week time frame was unrealistic to complete work on two articles, given that they were using a new process. They did agree, however, that their efficiency improved during the second round of the negotiations.

Using an interest-based process can also be expensive. Normally, interest-based negotiations requires a great deal of face-to-face interaction. Bringing all parties together face-to-face may not only require additional time and resources, but may also increase travel and per diem costs. Because the multi-regional bargaining unit in this experiment is geographically dispersed, travel and per diem costs were significant. During term negotiations, participants agreed to experiment with using conference calls to help reduce travel costs (only during the initial steps of the process).

6. Allow for Flexibility In The Application of Any Interest-based Negotiation Model

A model is simply a framework, or conceptual guide, and should not be viewed as the end and be all of successful negotiations. Participants must be willing to adapt and build on any model to meet their needs and expectations. A facilitator can be of great assistance in tailoring a model to meet these needs and expectations and in adapting processes to particular contexts and settings.

The DOL/FMCS interest-based model used by the NTEU and Management proved to be a useful conceptual tool, but in places lacked sufficient detail for effective implementation. While the model does provide a broad framework for using an interest-based process, participants learned that it cannot be viewed as a recipe for success.

Participants learned that despite the lack of specific guidance provided by the DOL/FMCS model, they could adapt and build on the six-step process to meet their specific needs. Aided by an experienced facilitator participants were able to tailor the model to meet their specific needs and expectations (See Section V above for more detail on how the group adapted the DOL/FMCS model).

7. Take Advantage of Available Technology

With tight deadlines and multiple parties participating in a negotiation, modern computer technology can be of great utility for organizing ideas and drafting contract language. During the NTEU/DHHS pilot, participants took advantage of computer technology known as Ovation⁵. Ovation allows one to project a computer screen onto a wall or pull-down projection screen to facilitate drafting contract language. Using this technology, participants jointly drafted language and reviewed the language as it was being projected on to a screen. Every individual participated in writing the new language, giving each participant a strong sense of ownership. While drafting language, participants discussed the intent and impact of the language. These discussions were later communicated to constituents during training on the substance of the articles. Participants in the NTEU/DHHS experiment agreed that the Ovation technology was a key factor in finalizing contract language before the end of the negotiations.

⁵Ovation is a projection panel system produced by the Proxima Corporation. The panel is placed on an overhead projector and connected to a personal computer so that text or data can be projected onto a screen or wall.

Portable computers or notebooks can also aid participants in quickly producing hard copies of listings and proposed language that may need to be reviewed individually before being adopted by the entire group. Participants felt that having a hard copy of the final language by the end of the negotiations was particularly helpful. Parties should research and agree on the use of such technology prior to the start of negotiations.

8. Accept the Inevitability of Conflict

Conflict is inevitable and should not be glossed over in the interest of protecting relationships or protecting the process. Participants in the NTEU/DHHS pilot learned that even with an interest-based process there will be conflict. The interest-based negotiation process provides for the healthy surfacing of issues and interests and provides a framework for satisfying mutual interests. It does not eliminate conflict. The objective in using this process is not to eliminate conflict, but to learn how to effectively work through differences so as to achieve understanding and produce positive outcomes. The participants in this experiment frequently reminded each other to be "hard" on the issues and "soft" on the people.

9. Recognize the Importance of Building Trust

The success of any interest-based negotiation is largely dependent on participants' trust in the process, in the neutrality of the facilitator and in one another. Building trust in these three areas requires substantial commitment and time on the part of all participants.

Participants in the NTEU/DHHS experiment realized that a certain amount of "storming" or conflict was necessary to build trust. Their ability to get past these periods of storming or conflict and move on with the process helped to build trust. Participants also engaged in a hand-showing exercise⁶ which many felt helped to build trust by demonstrating that NTEU and Management were often in agreement in evaluating options against standards and that interests did not always fall along strict Union or Management lines. The participants also learned that certain behaviors can be destructive to trust building. For example, distractions such as side-bar conversations can send unintended messages that destroy trust among participants. Although a side conversation between two participants may be intended only as a means to communicate a message without disrupting the entire group, it may be perceived as a tactic to hide or withhold information from other participants.

10. There is No Magic Formula for Predicting What Issues are Most Appropriate for an Interest-Based Process

Because the NTEU/DHHS negotiations were experimental, the FMCS and FLRA facilitators suggested that the parties begin with relatively "easy" or less controversial articles. The facilitators advised the NTEU and Management that because they were going to be using a new process it would be easier to start with less complex articles. The NTEU heeded this advice and chose a less controversial article, Reassignments. Management, however, decided that to test the effectiveness of an interest-based process, they wanted to choose an article that was very controversial and one which had produced many disputes. The NTEU and Management successfully negotiated both articles. Therefore, one may conclude that there is no magic formula for predicting which issues or articles are most appropriate for interest-based negotiations.

⁶Participants used a three-point scale to measure how closely an option was correlated to a standard (e.g., 0 = no correlation, 3 = strong correlation). Participants held up their hands to indicate how many points they had assigned to each option for each standard (e.g., option #1, standard #1 = 3 points). The facilitator used this hand showing process to tabulate the numerical data.

Participants learned that if they are successful at creating options to mutually satisfy their interests, even the most controversial issues can be effectively addressed.

11. Contract Language is Not the Only "Product"

Participants to any negotiation have a psychological need to see results. They want to have some product to walk away from the table with and may quickly become frustrated when results do not seem imminent. Redefining "product" may help participants gain a more immediate sense of accomplishment. A product may not always be a neatly packaged document, but rather it may simply be reaching consensus on one discussion point or gaining a better understanding of issues and concerns.

It is also important to recognize that there are different definitions of success. Participants in this experiment recognized that success can mean different things to different persons and were willing to evaluate the process and outcome(s) based on these varying definitions. For example, some participants recognized that their improved ability to communicate regarding their needs and concerns is one outcome likely to positively impact their future dealings. Small successes can add up to one big success or be important milestones in relationship building.

12. Communicate with Constituents Throughout the Process

Parties and stakeholders not present at the negotiation do not have the benefit of understanding how final contract language was arrived at unless participants to the negotiation communicate with them before, during and after implementation of the process. The process can have a more lasting, positive impact on the overall relationship of the parties if constituents are involved, even if tangentially, in the process. If constituents know how final contract language was developed, they are more likely have a common understanding of what the language means and are better able to support and aid in its implementation. In addition, when constituents understand how the process worked to achieve joint solutions that both parties can live with, they are more likely to try to resolve differences that arise under the contract by focusing on each others' interests or concerns rather than by focusing on positions.

Participants to the negotiation can keep constituents informed regarding: (1) the process being applied, (2) concerns raised during the negotiation of each issue, (3) solutions that were raised but thrown out because they did not meet the parties' needs, (4) solutions that were accepted and written into contract language, (5) how the accepted solutions were intended to address the parties' concerns.

The parties' decision to conduct joint implementation training was, in large part, intended to convey the spirit or atmosphere of the negotiations to constituents and to preserve and spread the cooperative nature of their efforts.

13. Document What Occurred and Why

Accurately documenting the process as it unfolds helps participants to identify needed improvements and reach a common understanding of what and how decisions were made. Documentation also enables others to learn from their experiences. During the NTEU/DHHS pilot a member of the Management staff took notes regarding both the process and the substance of the negotiations. These notes were ultimately adopted as the joint bargaining history for the negotiations and served as the framework for developing this case study.

14. Take Advantage of Opportunities for Joint Documentation and Training

The use of consensual decision-making in the NTEU/DHHS pilot created an environment in which

participants felt comfortable agreeing to joint documentation of the process and bargaining history. Participants also agreed to joint contract implementation training (training regarding the process used and the substance of the two articles negotiated). Joint training on the process was conducted with the assistance of a member of either the Union or Management team. It is anticipated that joint documentation of the process and bargaining history, as well as joint implementation training, will lead to fewer conflicts over interpretation of contract language.

VIII. CONCLUSION

The collective bargaining process is only one factor affecting on-going labor-management partnerships. However, the collective bargaining agreement and the relations surrounding the creation and implementation of the agreement serve as the linchpin in the overall labor-management relationship. Any reduction in tension and distrust is likely to spill over to the broader labor-management relationship. Continued use and further development of interest-based bargaining tools and techniques can contribute significantly to developing effective labor-management partnerships, a key goal of the Clinton Administration.